

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

THURSDAY, THE 31ST MAY 2007 / 10TH JYAISHTA 1929

CMA.No. 79 of 2001()

**-----
AGAINST THE ORDER DATED 12/01/2001 IN IA. 4204 & 4205/1996 IN
AS.80/1990 of II ADDL.SUB COURT,TRIVANDRUM
-----**

APPELLANT - PETITIONER - APPELLANT:

**-----
M. PHILPOSE, THARATTAYIL
THADATHARIKATHU VEEDU,
CHEKKAKONAM, KARAKULAM.**

BY ADV. SRI.L.MOHANAN

RESPONDENTS - RESPONDENTS - RESPONDENTS:

-
- 1. VASU PILLAI, RESIDING AT CHARUVILAKATHU
VEEDU, ANAD, PERINGAMALA.**
 - 2. KRISHNAMMA LALITHAMMA OF DO. DO.**

**BY ADV. SRI.M.R.ANANDAKUTTAN
SRI.B.SATHIQ
SRI.R.S.MADHU
SRI.MAHESH ANANDAKUTTAN**

**THIS CIVIL MISC. APPEAL HAVING BEEN FINALLY HEARD
ON 31.5.2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

K. PADMANABHAN NAIR, J.

=====

C.M.A. NO. 79 OF 2001

=====

Dated this the 31st day of May, 2007

J U D G M E N T

The plaintiff-appellant in A.S. No. 80 of 1990 on the file of the IInd Additional Sub Court, Thiruvananthapuram, is the appellant. Appellant filed a suit for declaration of title and recovery against the defendant. Suit was dismissed. Challenging the decree and judgment appellant filed an appeal, which was made over to Sub Court, Thiruvananthapuram and renumbered as A.S. No.80 of 1990. When the appeal came up for hearing on 27.2.1996, appellant was absent. Learned Sub Judge dismissed the appeal for default. After about five months, appellant filed I.A. No.4205 of 1996 under Order XLI Rule 19 for readmitting the appeal and I.A. No.4204 of 1996 under Section 5 of the Limitation Act for condoning the delay in filing the petition for readmission of the appeal. Learned Sub Judge held that the appellant failed to show sufficient cause for condoning the delay and dismissed both the petitions and also the appeal. Challenging

those orders, this CMA is filed.

2. Learned counsel appearing for the appellant has argued that the lower appellate court failed to note that for hearing an appeal the presence of the party is not necessary and counsel for the appellant could have argued the matter. But he sought for time. Learned counsel appearing for the respondents strenuously argued that the only attempt of the appellant is to harass the respondents by keeping the appeal pending. It is also argued that the suit was filed in the year 1985 and against the dismissal of the suit appellant filed an appeal which was dismissed for default on 26.11.1992. Thereafter the appellant filed a petition for readmission of the appeal and the appeal was readmitted. Again the appeal was dismissed for default. It was also argued that the appellant has no intention to prosecute the appeal and hence the CMA may be dismissed.

3. It is true that on 27.2.1996 the appeal was dismissed for default. But the same was readmitted. It is also true that the reasons stated by the appellant for readmission was not convincing. He did not go to box to give

evidence. But considering the fact that for hearing the appeal the presence of the appellant is not essential, I am of the view that one more opportunity can be given to the appellant to get the appeal disposed of on merits. But because of the conduct of the appellant the prayer can be allowed only on heavy terms.

4. In the result, the CMA is disposed of in the following manner: In case the appellant pays or deposits before this Court for payment to the respondents a sum of Rs.1,500/- within three weeks from today, the appeal will stand allowed and the orders passed by the Sub Judge in I.A. Nos.4204 and 4205 of 1996 will stand set aside and the appeal, A.S. No.80 of 1990 will stand restored to file. If the appeal is restored, the same shall be disposed of in accordance with law within a period of six months from the date of readmission of the appeal. In case the appellant fails to comply with the order of payment/deposit of money as above, the order passed by the Sub Judge in the I.As. will stand confirmed and the CMA will

C.M.A. NO. 79 OF 2001

-: 4 :-

stand dismissed.

Post on 27.6.2007 for compliance.

K. PADMANABHAN NAIR, JUDGE.

VSV

K. PADMANABHAN NAIR, J.

C.M.A. NO.79 OF 2001

J U D G M E N T

31ST MAY, 2007